

Executive Summary – Enforcement Matter – Case No. 50081
Roshan Shrestha dba New Yonkers
RN102659786
Docket No. 2015-0269-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

New Yonkers, 6111 Tezel Road, Suite 110, San Antonio, Bexar County

Type of Operation:

Convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: June 19, 2015

Comments Received: No

Penalty Information

Total Penalty Assessed: \$8,625

Amount Deferred for Expedited Settlement: \$1,725

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$215

Total Due to General Revenue: \$6,685

Payment Plan: 35 payments of \$191 each

Supplemental Environmental Project ("SEP") Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Executive Summary – Enforcement Matter – Case No. 50081
Roshan Shrestha dba New Yonkers
RN102659786
Docket No. 2015-0269-PST-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: November 5, 2014

Date(s) of NOE(s): January 22, 2015

Violation Information

1. Failed to monitor the Underground Storage Tanks (“USTs”) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].
2. Failed to provide corrosion protection for the UST system. Specifically, the flexible connectors are in contact with the soil [30 TEX. ADMIN. CODE § 334.49(a)(1) and TEX. WATER CODE § 26.3475(d)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent implemented a method of release detection for the USTs on February 5, 2015.

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days, install a corrosion protection system and test the system; and
- b. Within 45 days, submit written certification demonstrating compliance with a.

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Executive Summary – Enforcement Matter – Case No. 50081
Roshan Shrestha dba New Yonkers
RN102659786
Docket No. 2015-0269-PST-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: John Fennell, Enforcement Division,
Enforcement Team 7, MC 128, (512) 239-2616; Candy Garrett, Enforcement Division,
MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: Roshan Shrestha, Owner, New Yonkers, 6111 Tezel Road, Suite 110, San
Antonio, Texas 78253

Respondent's Attorney: N/A



Policy Revision 4 (April 2014)

Penalty Calculation Worksheet (PCW)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	26-Jan-2015	Screening	2-Feb-2015	EPA Due	
	PCW	2-Feb-2015				

RESPONDENT/FACILITY INFORMATION

Respondent	Roshan Shrestha dba New Yonkers				
Reg. Ent. Ref. No.	RN102659786				
Facility/Site Region	13-San Antonio		Major/Minor Source	Minor	

CASE INFORMATION

Enf./Case ID No.	50081	No. of Violations	2
Docket No.	2015-0269-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	John Fennell
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	20.0% Enhancement	Subtotals 2, 3, & 7	\$1,500
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Notes: Enhancement for one agreed order with denial of liability.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$375
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$154
Estimated Cost of Compliance	\$3,500

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,625
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OTHER FACTORS AS JUSTICE MAY REQUIRE

0.0%

Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$8,625
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STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty	\$8,625
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DEFERRAL

20.0%

Reduction

Adjustment	-\$1,725
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$6,900

Screening Date 2-Feb-2015

Docket No. 2015-0269-PST-E

PCW

Respondent Roshan Shrestha dba New Yonkers

Policy Revision 4 (April 2014)

Case ID No. 50081

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102659786

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Fennell

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for one agreed order with denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 20%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 20%

Screening Date 2-Feb-2015

Docket No. 2015-0269-PST-E

PCW

Respondent Roshan Shrestha dba New Yonkers

Policy Revision 4 (April 2014)

Case ID No. 50081

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102659786

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Fennell

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(c)(1)

Violation Description

Failed to monitor the underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants that would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

89 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$3,750

One quarterly event is recommended from the November 5, 2014 investigation to the February 2, 2015 screening date.

Good Faith Efforts to Comply

10.0%

Reduction \$375

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes

The Respondent came into compliance on February 5, 2015, after the January 22, 2015 Notice of Enforcement.

Violation Subtotal \$3,375

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$19

Violation Final Penalty Total \$4,125

This violation Final Assessed Penalty (adjusted for limits) \$4,125

Economic Benefit Worksheet

Respondent Roshan Shrestha dba New Yonkers
Case ID No. 50081
Reg. Ent. Reference No. RN102659786
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	5-Nov-2014	5-Feb-2015	0.25	\$19	n/a	\$19

Notes for DELAYED costs

Estimated cost to implement a method of release detection for the USTs at the Facility. The Date Required is the investigation date and the Final Date is the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$19

Screening Date 2-Feb-2015

Docket No. 2015-0269-PST-E

PCW

Respondent Roshan Shrestha dba New Yonkers

Case ID No. 50081

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102659786

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Fennell

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.49(a)(1) and Tex. Water Code § 26.3475(d)

Violation Description

Failed to provide corrosion protection for the UST system. Specifically, the flexible connectors are in contact with the soil.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants that would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

89 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended from the November 5, 2014 investigation to the February 2, 2015 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$135

Violation Final Penalty Total \$4,500

This violation Final Assessed Penalty (adjusted for limits) \$4,500

Economic Benefit Worksheet

Respondent Roshan Shrestha dba New Yonkers
Case ID No. 50081
Reg. Ent. Reference No. RN102659786
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment	\$2,000	5-Nov-2014	23-Oct-2015	0.96	\$6	\$129	\$135
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to install sacrificial anodes and test the system. The Date Required is the investigation date and the Final Date is the estimated compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$135

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To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN604304303, RN102659786, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN604304303, Roshan Shrestha

Classification: SATISFACTORY

Rating: 15.00

Regulated Entity: RN102659786, New Yonkers

Classification: SATISFACTORY

Rating: 15.00

Complexity Points: 3

Repeat Violator: NO

CH Group: 14 - Other

Location: 6111 TEZEL RD STE 110 SAN ANTONIO, TX 78250-4185, BEXAR COUNTY

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s):

PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 44336

Compliance History Period: September 01, 2009 to August 31, 2014

Rating Year: 2014

Rating Date: 09/01/2014

Date Compliance History Report Prepared: February 02, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: February 02, 2010 to February 02, 2015

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: John Fennell

Phone: (512) 239-2616

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? YES
- 3) If **YES** for #2, who is the current owner/operator? L S FOOD MART INC OWNER since 1/4/2013
SHRESTHA, ROSHAN OPERATOR since 1/4/2013
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? AKSONS ENTERPRISE INC, OWNER OPERATOR, 8/1/2008 to 1/3/2013
- 5) If **YES**, when did the change(s) in owner or operator occur? 1/4/2013

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- 1 Effective Date: 08/12/2012 ADMINORDER 2011-2255-PST-E (1660 Order-Agreed Order With Denial)
Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)
Description: Failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring).

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):
N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):
A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.
N/A

F. Environmental audits:
N/A

G. Type of environmental management systems (EMSs):
N/A

H. Voluntary on-site compliance assessment dates:
N/A

I. Participation in a voluntary pollution reduction program:
N/A

J. Early compliance:
N/A

Sites Outside of Texas:
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ROSHAN SHRESTHA DBA NEW
YONKERS
RN102659786**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2015-0269-PST-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Roshan Shrestha dba New Yonkers ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent operates a convenience store with retail sales of gasoline at 6111 Tezel Road, Suite 110 in San Antonio, Bexar County, Texas (the "Facility").
2. The Respondent's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 27, 2015.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Eight Thousand Six Hundred Twenty-Five Dollars (\$8,625) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Fifteen Dollars (\$215) of the administrative penalty and One Thousand Seven Hundred Twenty-Five Dollars (\$1,725) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and

satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Six Thousand Six Hundred Eighty-Five Dollars (\$6,685) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Ninety-One Dollars (\$191) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent implemented a method of release detection for the USTs on February 5, 2015.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As operator of the Facility, the Respondent is alleged to have:

1. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on November 5, 2014.

2. Failed to provide corrosion protection for the UST system, in violation of 30 TEX. ADMIN. CODE § 334.49(a)(1) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on November 5, 2014. Specifically, the flexible connectors are in contact with the soil.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Roshan Shrestha dba New Yonkers, Docket No. 2015-0269-PST-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, install a corrosion protection system and test the system, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and


accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

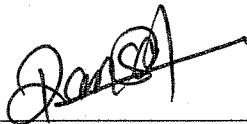
8/24/15
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

05/13/2015
Date

ROSHAN SHRESTHA
Name (Printed or typed)
Authorized Representative of
Roshan Shrestha dba New Yonkers

OWNER
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.